

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2007 MTWCC 53

WCC No. 2006-1728

ELAINE WOOD, on behalf of her spouse, JEFFREY S. WOOD (deceased) and
SANDRA WOOD, guardian *ad litem* for JASON WOOD, son of Jeffrey S. Wood

Petitioners

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER GRANTING PETITIONERS' MOTION TO AMEND PETITION

Summary: Petitioners move the Court to allow them to amend their petition after a deposition allegedly revealed new information regarding Respondent's adjusting of this claim. Respondent opposes the motion, arguing that the new contentions raise issues which have not been mediated.

Held: Petitioners' motion to amend is granted. Mont. R. Civ. P. 15(a) allows amendment of a petition to be freely given where justice so requires. Although Petitioners' amended petition adds new contentions, it does not raise new issues and therefore mediation is not required.

Topics:

Pleading: Amendments. Leave to amend petition granted where Petitioners sought to allege specific contentions in support of their allegations that they are entitled to attorney fees and a penalty, where Petitioners had prayed for attorney fees and a penalty in their initial petition and they learned additional facts which go to Respondent's alleged unreasonableness in adjusting the claim during the post-petition deposition of Respondent's claims adjuster.

Constitutions, Statutes, Regulations, and Rules: Montana Rules of Civil Procedure - by Section: Rule 15. Leave to amend petition granted where

Petitioners sought to allege specific contentions in support of their allegations that they are entitled to attorney fees and a penalty, where Petitioners had prayed for attorney fees and a penalty in their initial petition and they learned additional facts which go to Respondent's alleged unreasonableness in adjusting the claim during the post-petition deposition of Respondent's claims adjuster.

¶ 1 Petitioners move this Court to allow them to amend their petition in this matter, arguing that it is for the purpose of adding contentions addressing the issues which remain subsequent to Respondent Montana State Fund's acceptance of their claim for benefits. Respondent objects, arguing that the contentions Petitioners wish to make and the issues these contentions would raise have not been mediated. Petitioners reply that the only issues remaining in this case are whether they are entitled to costs, attorney fees, and a penalty, and that mediation is not a prerequisite for this Court to consider those issues.

¶ 2 I find Respondent's argument – that the contentions which Petitioners wish to add to their claim raise issues which require mediation – to be unpersuasive. In their Petition for Hearing, Petitioners asserted that Respondent's actions have been unreasonable and that they are entitled to their costs, attorney fees, and a penalty. In its Response to Petition for Hearing, Respondent countered that its actions in adjusting the claim have been reasonable and that Petitioners are not entitled to their costs, attorney fees, or a penalty. Although Petitioners are seeking to allege specific contentions purportedly in support of these allegations in their amended petition, they are not raising new issues.

¶ 3 In *Higgins v. Liberty Northwest Ins. Corp.*, this Court, noting that Mont. R. Civ. P. 15(a) provides that leave to amend "shall be freely given when justice so requires," held that where information on which the claimant's new theory of the case was gleaned during recent depositions, a "good enough reason" to allow an amendment was present, even as late as the pretrial conference.¹ In the present case, Petitioners argue that it was not until the deposition of Respondent's claims adjuster that they learned additional facts which go to the alleged unreasonableness of Respondent's actions in adjusting this claim. I find this to be a sufficient reason to allow amendment of the petition to reflect the newly-gleaned information.

ORDER

¶ 4 Petitioners' motion to amend their petition is GRANTED.

¹ 2004 MTWCC 31, ¶ 6.

¶ 5 Petitioners' Amended Petition for Hearing is hereby filed with the Court as of the date of this Order.

¶ 6 The Court will issue an Amended Scheduling Order reflecting this Order.

DATED in Helena, Montana, this 6th day of December, 2007.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Thomas A. Marra
Kevin Braun
Submitted: May 16, 2007